

always being whether the thing is to happen before or after the estate is to vest. 2 *Thos. Coke*, 19 *note k*. And, in the same note it is stated, and there can be no doubt of the principle, that conditions precedent must be punctually performed before the estate can vest. And the authorities all show that even a Court of Equity will never vest an estate where, by reason of a condition precedent, it will not vest at law. *Popham vs. Bampffield*, 1 *Vernon*, 83. A condition precedent, says Chancellor Kent, must be literally performed, and even a Court of Chancery will never vest an estate where, by reason of a condition precedent unperformed, it will not vest at law. 4 *Kent*, 125; *City Bank et al. vs. Smith*, 3 *G. & J.*, 265, 281.

In the case under consideration, there can be no doubt whatever of the intention of the grantor in the deed. He did not mean, as insisted by the counsel for the defendants, to give Mrs. Dawes a title *in presenti*. On the contrary, he retained the title and the enjoyment of the property during his own life, and said that only in case she was the longest liver should she have it. Whether the deed was to operate as a testamentary disposition of the property, or in any other way, is not material, as it is too clear for argument, upon its face and from its unambiguous terms, that the condition upon which Mrs. Dawes's title was to vest was that she should survive the grantor. Earle certainly had a right to prescribe his own terms when making a gratuitous disposition of his property. He has done so by imposing a precedent condition, which has not been performed, and this Court cannot vest the estate. My opinion, therefore, is that nothing has passed by the deed.

The counsel may prepare a decree according to these views.

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